

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B2

PLR-132532-09

Date: October 29, 2009

X =

State =

A =

B =

Trust1 =

Trust2 =

D1 =

D2 =

D3 =

D4 =

D5 =

Year1 =

Dear

This responds to a letter dated July 7, 2009, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. Pursuant to an agreement dated D3, A established Trust1, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676, and transferred X stock to Trust1.

On D4, A died and Trust1 ceased to be a grantor trust. Trust1 continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) beginning on the day of the deemed owner's death and ending on D5 when the X stock was transferred to Trust2. On D5, X's S corporation election terminated under § 1362(d) when Trust2, became a shareholder of X because the trustees of the trust failed to make an electing small business trust (ESBT) election for the trust.

X represents that Trust2 qualified to elect to be treated as an electing small business trust (ESBT) under § 1361(e). X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that X has filed returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D5 because Trust2 was not an eligible shareholder of X. We also conclude that this termination of X's S election on D5 was an inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from D5 provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

This ruling is conditioned upon the trustee of Trust2 filing an ESBT election for Trust2 with an effective date of D5, with the appropriate service center within 60 days of the date of this ruling. This ruling is also conditioned upon Trust2 and B filing amended returns for Year1 and subsequent years consistent with the treatment of Trust2 as an ESBT within 60 days following the date of this letter. A copy of this letter should be attached to the ESBT election and the amended returns. If the trusts do not comply with these conditions, this letter is null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust2 qualifies to be an ESBT.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes